Supreme Court of the United States.

No. 142.

FOLEY, AVERY & CO., THIRD OPPONENTS AND PLAINTIFFS IN ERROR.

vs.

MRS. WIDOW IRENE SMITH, DEFENDANT IN ERROR.

BRIEF OF COUNSEL OF DEFENDANT IN ERROR.

The facts of this case are:

Irene Smith, defendant in error, deposited for collection, in the Bank of Kentucky, at Louisville, a note drawn by one McHutton, and given to her as part of the price of a plantation in Louisiana, sold by Mrs. Smith to McHutton.

This note was sent by the Bank of Kentucky, for collection, to Louisiana, where the drawer, McHutton, lived, to the Citizens' Bank of Louisiana, at New Orleans.

The note was protested, at maturity, for non-payment by McHutton.

Several months after the maturity and protest, McKnight, agent in New Orleans of the Bank of Kentucky, withdrew the note from the Citizens' Bank of Louisiana, in New Orleans, and sold it to Foley, Avery & Co.

When Mrs. Smith deposited the note for collection in the Bank of Kentucky, at Louisville, she endorsed it, as usual.

The question now is, can Foley, Avery & Co., the assignees of the note after maturity, recover the amount from Mrs. Smith?

Points.

1. The transferree of a note after maturity takes it subject to all the equities existing between the party who transfers and those who precede him on the note. (See Story on Prom. Notes, secs. 178 to 180.)

2. Therefore whatever rights on this note the Bank of Kentucky had against Mrs. Smith, the same the transferrees (Foley, Avery & Co.) have against Mrs. Smith.

3. But the Bank of Kentucky had no rights against Mrs. Smith, being only her trustee for collection.

4. Therefore the transferree (Foley, Avery & Co.) have no rights against Mrs. Smith.

5. The judgment of the lower court should therefore be affirmed.

Respectfully, submitted.

THOMAS J. DURANT,
Of Counsel.